

INTERLOCAL COOPERATION AGREEMENT FOR COST-SHARING OF ROAD CONSTRUCTION PROJECT FOR UZONA AVENUE

This Agreement is made and entered into by and between the CITY OF HILDALE, a Utah municipal Corporation (the “City”) and the WASHINGTON COUNTY SCHOOL DISTRICT, a local school district organized and existing pursuant to the laws of the State of Utah (the “District”). Throughout this Agreement the City or the District may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. WHEREAS, pursuant to applicable City ordinances, specifications, and standards, the District is being required to construct certain off-site improvements of Uzona Avenue in Hildale, Utah (the “District Improvements”) in connection with its Water Canyon High School CTE Building and Athletic Fields development project (the “Development”), for which the District is responsible to pay to construct;
- B. WHEREAS, there are portions of Uzona Avenue that are not being improved in connection with the Development, but that the City desires to improve simultaneously with the District Improvements (the “City Improvements”), and for which the City is responsible to pay to construct;
- C. WHEREAS, the District has caused its engineer, Alpha Engineering (the “Engineer”) to prepare design documents, plans and specifications for the District Improvements and City Improvements (collectively, the “Project”) consistent with the Parties’ intent and in accordance with all applicable City standards and specifications, illustrated by the drawing attached hereto as Exhibit A, and has incorporated the same into the District’s plans and specifications (the “Plans and Specifications”) as set forth in the contract documents for the construction of the Project;
- D. WHEREAS, the District has awarded a bid for the Project through its procurement procedures to a qualified contractor mutually agreeable to the Parties (the “Contractor”);
- E. WHEREAS, the Parties have determined that the cost-sharing breakdown reflected in Exhibit B attached hereto fairly allocates the bid cost of the Project proportionate to the extent of the relative benefits that each Party will receive from the Project;
- F. WHEREAS, the Utah Interlocal Cooperation Act, found at Title 11, Chapter 13 of the Utah Code, permits public agencies to enter into agreements with one another for the purpose of exercising, on a joint and cooperative basis, powers and privileges that will benefit their citizens and make the most efficient use of their resources;
- G. WHEREAS, each of the parties is a public agency as defined in the Utah Interlocal Cooperation Act, and is authorized to enter into this Agreement; and
- H. WHEREAS, the Parties desire to enter into this Agreement for their mutual benefit and to establish the responsibilities and obligations of each Party.

NOW, THEREFORE, for and in consideration of the mutual promises, obligations, covenants and representations contained herein, the Parties do hereby mutually agree as follows:

1. Construction Project.

The District shall cause the Project to be constructed by its Contractor. Such construction shall be consistent with the Plans and Specifications, including any changes made thereto under the terms of this Agreement. All responsibility of overseeing the contract, inspections, and management of the project shall be borne by the District. The City shall have access to the job site and shall be consulted throughout the process, when necessary in relation to portions of the Project identified as the sole or joint responsibility of the City.

2. Change Orders.

Each Party is responsible for the additional cost, if any, of a change order that affects that Party's portion of the Project or, if the change order affects a jointly-funded portion of the Project, for such share of the additional cost as the Parties may agree upon in writing. In the absence of such an agreement, the additional cost shall be shared equally.

The District will not approve any change order that will affect the City without the City's approval given in writing, including by email or other electronically-transmitted message. Within 15 business days after written request by the District, the City shall communicate to the District its approval or denial of the proposed change order. If necessary to comply with applicable law, or with the City's established policies and procedures, said 15-day notice period will be extended for such longer time period as the law or policies and procedures may allow, but in no event more than 45 calendar days following receipt of the District's request. In the absence of timely express approval or denial by the City, the proposed change order shall be deemed denied.

3. Final Inspection.

The District shall involve the City in the final inspection upon completion of the Project and prior to the District's acceptance of the Contractor's work. The City shall provide the District with information about any problem or concern that the City may reasonably identify with the construction, and the District shall require its Contractor to undertake and complete all appropriate remedial actions to the City's reasonable satisfaction.

4. Payment.

The District shall be responsible for making all initial payments to the Contractor as required by the contract, with appropriate reimbursement from the City in accordance with the provisions of Section 5 of this Agreement. Promptly upon receiving any invoice from the Contractor, the District shall forward a copy of such invoice to the City.

5. Reimbursement.

The City shall reimburse the District for the City's allocated portion of Project costs actually paid by the District within 30 calendar days following receipt of an invoice from the District, which invoice shall be issued no earlier than the date that the Project has been completed and accepted.

6. Ownership and Warranty.

Upon due acceptance of the Project by the City as provided under applicable law, the City shall own the improvements, and thenceforward it shall be responsible for the operation, maintenance, inspection and, as necessary, repair and replacement of the Improvements at its sole cost and expense except as provided under this Agreement.

For a period of one year following completion and acceptance of the Project, if the City discovers any defect in the materials or workmanship in the Improvements, or that the Improvements were not constructed in accordance with the Plans and Specifications, then notwithstanding any provision of this Agreement to the contrary, the District shall

(i) cause the Contractor, at the Contractor's expense, to remedy the defect or the variance from the Plans and Specifications within a reasonable amount of time; and/or, (ii) pursue a claim against any of the Contractor's bond(s) to complete the remedial work on the Improvements.

7. Term.

This Agreement shall be effective on the date that the Parties have satisfied the requirements of Title 11, Chapter 13, Utah Code Annotated (the "Effective Date"). This Agreement shall continue and remain in full force and effect through the tender of reimbursement by the City provided for herein.

8. Termination.

Either Party may terminate this Agreement by written notice delivered prior to issuance of a notice to proceed to Contractor. Thereafter, this Agreement may only be terminated before the end of its term by the express written agreement of the Parties, or by written notice by a Party delivered at least 30 days following a written notice of material default under the terms of this Agreement if such default has not been effectively cured during the 30-day notice period.

9. Notices.

All notices, requests, demands and other communications under this Agreement shall be in writing and shall either be hand delivered or sent by first-class mail or commercial courier service addressed to the Parties at the following addresses:

City
Attn: City Recorder
320 East Newel Ave
PO Box 840490
Hildale, UT 84784

District
Attn: Superintendent
121 West Tabernacle
St. George, Utah 84770

10. Mutual Indemnification and Hold Harmless.

Each Party hereby agrees and promises to indemnify and hold harmless the other Party, as well as its officers, employees, agents, representatives, contractors, and volunteers, from and against any third-party loss, damage, injury, claim, action, cause of action, demand, expense, cost, fee, or otherwise (collectively, the “Claims”) that may be caused by the acts or omissions of the indemnifying Party, its officers, employees, agents, representatives, contractors, or volunteers, negligent or otherwise, whether the Claims are known or unknown, or sound in law, equity, or otherwise.

11. Governmental Immunity.

The Parties recognize and acknowledge that each Party is covered by the *Utah Governmental Immunity Act*, codified at Utah Code Section 63G-7-101, et seq. (the “UGIA”), and nothing herein is intended to waive or modify any of the rights, defenses or provisions provided therein. Officers and employees performing services pursuant to this Agreement shall be deemed officers and employees of the Party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such Party under the provisions of the UGIA. Each Party shall be responsible and shall defend the action of its own officers or employees, negligent or otherwise, performed pursuant to the provisions of this Agreement.

12. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Utah Interlocal Cooperation Act in connection with this Agreement, the Parties agree as follows:

- (a) This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Utah Code Section 11-13-202.5.
- (b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Utah Code Section 11-13-202.5(3).
- (c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code Section 11-13-209.
- (d) No separate legal entity is created by the terms of this Agreement. The Parties designate the District Facilities Director to be responsible to administer this Agreement and the accomplishment of the purposes of the cooperative action contemplated hereby and specified herein pursuant to Utah Code Section 11-13-207.
- (e) No real or personal property shall be acquired jointly by the Parties as a result of this Agreement.
- (f) Following the execution of this Agreement by the Parties, either Party may cause a notice regarding this Agreement to be published on behalf of the Parties in accordance with Utah Code Section 11-13-219.

13. Survival after Termination.

Termination of this Agreement shall not extinguish or prejudice either Party's right to enforce the terms of this Agreement with regard to a duty to maintain insurance, to indemnify and hold harmless the enforcing Party, or to perform any payment obligation hereunder.

14. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter herein, and supersedes all prior and contemporaneous agreements, negotiations, representations, promises, or understandings of the Parties whether oral or written. No supplement, modification, amendment, or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party sought to be bound. No waiver of any of the provisions of this Agreement shall be construed as a waiver of any other provision or as a continuing waiver.

15. No Assignment.

Neither Party may assign this Agreement, or any of its rights, duties, or obligations under this Agreement, without the prior written consent of the other Party. Any assignment made in violation of this section or in violation of law shall be void. Notwithstanding the foregoing, either party may pledge or assign this Agreement as security for its bonding or other financing activities.

16. Force Majeure.

In the event that either Party shall be delayed or hindered in or prevented from the performance of any of its obligations under this Agreement by reason of natural disaster, including without limitation fires, floods, or earthquakes, or other cause such as strikes, labor disruptions, material shortage, failure of power, acts of legislative, judicial, executive, or administrative authorities other than the Parties, riots, insurrection, wars, or other reasons of a like nature not the fault of the Party delayed in performing its obligations under the terms of this Agreement, then performance of such act(s) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, without any liability on the part of the delayed Party.

17. Choice of Law; Jurisdiction; Venue.

The interpretation, construction or enforcement of this Agreement shall be governed by the laws of the state of Utah, without reference to conflict of law principals. The Parties agree that the courts located in Washington County, State of Utah shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Agreement, or its formation or validity.

18. Severability.

If any part or provision of this Agreement is found by a court of competent jurisdiction to be invalid, prohibited, unlawful or unenforceable, such part or provision shall be null, void, and without force or effect to the extent necessary to avoid such invalidity, prohibition, unlawfulness or unenforceability, but to the extent practicable those parts or provisions of this Agreement, which are not invalid, prohibited, unlawful or unenforceable shall remain in full force and effect.

19. No Third-Party Beneficiaries.

This Agreement is entered into for the exclusive benefit of the Parties and their respective successors, assigns and affiliated persons referred to herein. Unless otherwise provided by applicable law, no creditor or other third party shall have any right or expectation to receive any benefits under this Agreement.

20. Authority.

The persons executing this Agreement on behalf of each Party hereby represent and warrant that they are duly authorized and empowered to execute the same, and that this Agreement represents a binding and enforceable obligation of such Party.

21. Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same Agreement.

WHEREFORE, the Parties have signed this Agreement on the dates set forth below.

DATED this ___ day of _____, 2021.

[SIGNATURES ON THE FOLLOWING PAGES]

WASHINGTON COUNTY SCHOOL DISTRICT

Kelly Blake, Board President

Attest:

Clerk

Date: _____

Approved as to Form:

Attorney for Washington County School District

HILDALE CITY

Donia Jessop, Mayor

Attest:

Athena Cawley
City Recorder

Date: _____

Approved as to Form:

City Attorney

EXHIBIT A
PROJECT MAP

**EXHIBIT B
COST SHARE**

Description	District Share	City Share	Total
<i>Section 1.</i> Uzona Avenue from Central Street to West Side of Development (Station 200+00)	\$0.00	\$62,418.15	\$62,418.25
<i>Section 2.</i> Area fronting the Development not required to be developed (Station 200+00 to Station 206+78)	\$45,576.95	\$45,576.96	\$91,153.91
<i>Section 3.</i> Area fronting the Development required to be developed (Station 206+78 to Hildale Street)			*(District only – no share)
<i>Section 4.</i> Uzona Avenue from Carling Street to Hildale Street	\$0.00	\$82,088.00	\$82,088.00
TOTAL	\$45,576.95	\$190,083.21	\$235,660.16